

**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In the Appeal of)
Netorian Limited Liability Company)
)
) Docket No. MSBCA 3028
Under Comptroller of Maryland CATS+)
Task Order RFP No. E00B6400091)
)

Appearance for Appellant:	R. Harrison Smith III, Esq.
	Jon D. Levin, Esq.*
	Maynard, Cooper & Gale, PC
	Birmingham & Huntsville, Alabama
	*Specially Admitted Per Md. Rule
	19-214

Appearance for Respondent:	Brian L. Oliner, Esq.
	Assistant Attorney General
	Comptroller of Maryland
	Annapolis, Maryland

OPINION BY MEMBER STEWART

Appellant failed to show that the procuring agency's selection for award of the task order was arbitrary, capricious or unreasonable. Further, the Board finds Appellant's contentions that the proposed awardee did not meet the minimum requirements of the solicitation and was not a corporation in good standing under Maryland law to be without merit.

FINDINGS OF FACTS

1. On July 2, 2012, Maryland Department of Information Technology ("DoIT") issued Request for Proposals 060B2490023, Consulting and Technical Services+ (the "CATS+ RFP") to procure information technology ("IT") consulting and technical services for the State of Maryland. The CATS+ RFP and the resulting Master Contracts between the State and qualified

offerors was the first step in a two-step process that the Legislature created in 2001 to streamline the State's process for the procurement of IT services. In the second step, State agencies may issue Task Orders ("TO") to Master Contractors to obtain IT services and resources quickly and efficiently. On April 3, 2013, the Board of Public Works approved the award of Master Contracts to Netorian Limited Liability Company ("Netorian") and others, including Business Solutions Group, Incorporated. ("BSGI"). The effective date of BSGI's Master Contract was April 21, 2013. The "Contractor" was therein defined in Section 1.2 as "Business Solutions Group, Inc.," whose principal business address is 1590 Lancaster Green, Annapolis, MD 21401, and whose principal business office in Maryland is listed as the same address. Yelena Madorsky signed the Master Contract for BSGI in her capacity as President on March 22, 2013. On the same date she signed the Master Contract, Ms. Madorsky also signed, in her capacity as President, a Contract Affidavit, which was incorporated into its Master Contract which included the following Section B:

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE
DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT: Business Solutions Group, Incorporated

The business named above is a (check applicable box):

- (1) Corporation — ☒ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Yelena Madorsky
Number: _____ Address: 1590 Lancaster Green
Annapolis MD 21401

2. Public records of DoIT list the following for BSGI on its CATS+ homepage:

Master Contractor Details

Company Information

Master Contractor Name:	Business Solutions Group, Inc.
Web Site:	N/A
Small Business Reserve:	No
Minority Business Enterprise:	Yes
Veteran Owned Small Business Enterprise:	No
eMaryland Marketplace No:	202903
Labor Rates:	Click to view rates

Corporate Contact Information

Name:	Yelena Madorsky
Title:	President
Address	1590 Lancaster Green
City/State/Zip:	Annapolis MD 21401
Email:	ymadorsky@bsg.us.com
Phone:	410-849-8916
Fax:	410-849-2565

<http://www.doit.state.md.us/itmc/mcDetails.aspx?mcID=52&smc=15> (last visited Oct. 9, 2017).

3. A State Department of Assessment and Taxation (“SDAT”) Business Entity Search among the public records for “Business Solutions Group” shows:

Department ID Number: D04718573
Business Name: BUSINESS SOLUTIONS GROUP, INCORPORATED
Principal Office: 1590 LANCASTER GREEN
ANNAPOLIS MD 21401
Resident Agent: YELENA MADORSKY
1590 LANCASTER GREEN
ANNAPOLIS MD 21401
Status: INCORPORATED
Good Standing: THIS BUSINESS IS IN GOOD STANDING
» [Order Certificate of Status](#)
Business Type: CORPORATION
Business Code: ORDINARY BUSINESS - STOCK
Date of Formation/ Registration: 06/23/1997
State of Formation
Stock Status: STOCK
Close Status: YES
<https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D04718573> (last visited Oct. 9, 2017) and,

Department ID Number: D02659613
Business Name: BUSINESS SOLUTIONS GROUP, INC.
Principal Office: 8121 GEORGIA AVE.
SILVER SPRING MD 20910
Resident Agent: MAC N. CLAXTON
8121 GEORGIA AVE.
SILVER SPRING MD 20910
Status: FORFEITED
Good Standing: THIS BUSINESS IS **NOT IN GOOD STANDING**
» [Order Certificate of Status](#)
Business Type: CORPORATION
Business Code: ORDINARY BUSINESS - STOCK
Date of Formation/ Registration: 10/25/1988
State of Formation
Stock Status: STOCK
Close Status: NO
FORFEITED - PROCLAMATION OF THE DEPARTME 10/3/1994 8:30:00 AM
<https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D02659613>
(last visited Oct. 9, 2017).

4. On September 15, 2016, the Comptroller of Maryland (“COM”) issued Task Order Request for Proposals E00B6400091 (“TORFP”) for IT consulting and technical services to the Master Contractors. The purpose of the TORFP was to obtain IT management consulting services to assist

the COM in managing a fully-integrated and updated tax management system, including coordination of COM resources and oversight of the project's implementation contractor throughout the implementation and maintenance phase. The COM's project to replace its legacy systems with a fully-integrated and updated tax management system is also referred to as the Compass project. The procurement officer ("PO") for the TORFP was Mike Balderson. The original closing date to submit proposals in response to the TORFP was October 13, 2016, but was later amended to November 30, 2016.

5. The TORFP in Section 2.1.1 OFFEROR'S COMPANY MINIMUM QUALIFICATIONS provides, in pertinent part:

2.1.1 OFFEROR'S COMPANY MINIMUM QUALIFICATIONS

Only those Master Contractors that fully meet all minimum qualification criteria shall be eligible for TORFP proposal evaluation. The Master Contractor's proposal and references will be used to verify minimum qualifications. The Master Contractor's proposal shall demonstrate expertise either in-house or through strategic alliances with other firms for providing the services described in this TORFP.

Only Master Contractor qualifications may be used to demonstrate meeting company minimum qualifications.

The Master Contractor's TO Proposal shall demonstrate meeting the following minimum requirements:

- A. At least five (5) years of experience within the last ten (10) years as a contractor providing IT management consulting and/or project management services for at least three (3) IT projects each with multi-phased implementations and a cost in excess of \$10M. Engagements shall clearly outline starting and ending dates for each applicable project.

6. Amendment #1 to the TORFP issued on November 9, 2016, changed the requirement of Section 2.1.1:

Section 2.1.1 OFFEROR'S COMPANY MINIMUM QUALIFICATIONS

Offeror company minimum qualifications have been amended as follows:

The Master Contractor's TO Proposal shall demonstrate meeting the following minimum requirements:

- A. At least five (5) years of experience within the last ten (10) years as a contractor providing IT management consulting and/or project management services for at least three (3) IT projects, at least one (1) of which must have been a multi-phased implementation with a cost in excess of \$10M. Engagements shall clearly outline starting and ending dates for each applicable project.

This amendment reduces from three (3) to one (1) the number of IT projects which must have been a multi-phased implementation with a cost in excess of \$10M for this minimum qualification. (emphasis in original).

7. The COM received questions, submitted anonymously, before the amended closing date for proposals. The COM responded to these questions by providing its answers to all Master Contractors who had expressed an interest in submitting offers in response to the TORFP. Included in the questions and answers provided was Question No. 10 regarding the Minimum Qualification requirement for Master Contractors contained in Section 2.1.1A:

Question: In reference to minimum requirement A, could COM further explain the \$10 million implementation cost requirement? For example, to be considered a qualifying implementation project, must it be valued at \$10 million dollars or greater? Or to be considered a qualifying implementation project, must the Master Contractor have profited \$10 million dollars or greater from completing the project?

Response: A qualifying project must have had a cost in excess of \$10M. There is no minimum requirement regarding the Master Contractor's profits.

8. The TORFP required offerors to submit separate technical and financial proposals.
9. The TORFP in Section 4.4.1 TO TECHNICAL PROPOSAL provides:

G) Master Contractor and Subcontractor Experience and Capabilities

- 1) Provide up to three examples of engagements or contracts the Master Contractor or subcontractor, if applicable, has completed that were similar to Section 3 - Scope of Work. Include contact information for each client organization complete with the following:
- a) Name of organization.

- b) Point of contact name, title, e-mail and telephone number (point of contact shall be accessible and knowledgeable regarding experience)
- c) Services provided as they relate to Section 3 - Scope of Work.
- d) Start and end dates for each example engagement or contract.
- e) Current Master Contractor team personnel who participated on the engagement.
- f) If the Master Contractor is no longer providing the services, explain why not.

10. The TORFP in Section 5.2 TO PROPOSAL EVALUATION CRITERIA provides:

The following are technical criteria for evaluating a TO Proposal in descending order of importance. Failure to meet the minimum qualifications shall render a TO Proposal not reasonably susceptible for award:

- A) The Master Contractor's overall understanding of the TORFP Scope of Work — Section 3. Level of understanding will be determined by the quality and accuracy of the technical proposal in adherence with Section 4.4.
- B) The overall experience, capability and references for the Master Contractor as described in the Master Contractor's TO Technical Proposal.
- C) The capability of the proposed resources to perform the required tasks and produce the required deliverables in the TORFP Scope of Work Section 3. Capability will be determined from each proposed individual's resume, reference checks, and oral presentation (See Section 1.5 Oral Presentations/Interviews).
- D) The ability for the Master Contractor to meet staffing expectations relative to supplying additional personnel for this TORFP meeting qualifications in Section 2.1 and 2.2.
- E) Demonstration of how the Master Contractor plans to staff the task order at the levels set forth in Section 3.1 and also for potential future resource requests.
- F) The content and reasonableness of any third party software licenses.

11. The TORFP in Section 5.3 SELECTION PROCEDURES provides:

- A) TO Proposals will be assessed throughout the evaluation process for compliance with the minimum qualifications listed in Section 2 of this TORFP, and quality of responses to Section 4.4.1 TO Technical Proposal.

- B) For all TO Proposals deemed technically qualified, oral presentations and interviews of proposed personnel will be performed, subject to the down select process explained below.

As described in Section 1.5, in the event that the COM receives more than six (6) responsive proposals, the TO Procurement Officer may perform a down select. The TO Procurement Officer will notify the Offeror at time of scheduling initial oral presentations and interviews whether subsequent rounds of oral presentations and interviews are required. When used, the down select procedures to be followed by the TO Procurement Officer are as follows:

- a) An initial oral presentation with interview will be performed for all proposals meeting minimum requirements.
 - b) A technical ranking will be performed for all proposals based on the initial oral presentation and interview. Proposals will be ranked from highest to lowest for technical merit based on the quality of the proposals submitted and the oral presentation and interview results.
 - c) The top proposals (not fewer than six (6)) identified by the technical ranking will be notified of additional oral presentations with interviews. All other Offerors will be notified of non-selection for this TORFP.
- C) For TO Proposals deemed technically qualified and not eliminated through the down select process (if used), the associated TO Financial Proposal will be opened. All others will be deemed not reasonably susceptible for award and the TO Procurement Officer will notify the Master Contractor it has not been selected to perform the work.
- D) When in the best interest of the State, the TO Procurement Officer may permit Offerors to revise their initial TO Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.
- E) Qualified TO Financial Proposal responses will be reviewed and ranked from lowest to highest price proposed.
- F) The most advantageous TO Proposal considering both the technical and financial submissions shall be selected for TO award. In making this selection, technical merit has greater weight.
- G) All Master Contractors submitting a TO Proposal shall receive written notice from the TO Procurement Officer identifying the awardee.

12. On November 30, 2016, Netorian, BSGI,¹ and five other Master Contractors submitted proposals. On December 20, 2016, the PO sent an email to Edward Dow, Proposal Manager at Netorian, to clarify its technical proposal due to problems the COM evaluation team was having verifying Netorian's Master Contractor Minimum Qualifications required by the TORFP, along

¹ BSGI used the logo "BSGI! Business Solutions Group, Inc." in its Technical Proposal, but referred to itself as "Business Solutions Group, Incorporated" on the cover page thereof and in its letter dated November 30, 2016, submitting its proposal.

with verifying the Minimum Qualifications of some of the personnel proposed by Netorian to meet the technical requirements of the scope of work as set forth in the TORP. On December 30, 2016, Netorian submitted a Proposal Clarification addressing COM's request to clarify its technical proposal.

13. Pursuant to Section 5.2B of the TORPF, all four offerors that submitted technically qualified proposals were required to provide oral presentations and proposed personnel for interviews. Netorian gave its presentation and provided its key personnel for interviews on January 13, 2017. On February 2, 2017, the COM evaluation team interviewed Netorian's replacement candidate for the position of System Integration Architect after its originally proposed candidate abruptly resigned.

14. The PO requested Best and Final Offers ("BAFO") from the four offerors responding to the TORFP, and their BAFO prices were:

Netorian	\$ 9,358,050.00
BSGI	\$12,460,028.48
Company A	\$13,031,407.82
Company B	\$13,385,266.39

15. On February 16, 2017, Debra Gorman, Compass Project Manager & Assistant Director, Compliance Division for COM, sent a Memorandum (the "Memorandum") to the PO with a recommendation for the award of the TO to BSGI based on COM's evaluation of the proposals. The rankings of the proposals were set forth in the Memorandum as follows:

Technical ranking:

1 st	Business Solutions Group, Inc.
2 nd	Company A
3 rd	Company B
4 th	Netorian, LLC

Financial ranking:

- 1st Netorian, LLC
- 2nd Business Solutions Group, Inc.
- 3rd Company A
- 4th Company B

Overall ranking:

- 1st Business Solutions Group, Inc.
- 2nd Company A
- 3rd Company B
- 4th Netorian, LLC

16. Ms. Gorman's Memorandum set forth COM's justification for recommending BSGI for award of the TO:

After conducting a detailed review of the proposals submitted by 4 offerors deemed susceptible for award, including review of technical proposals, oral presentations, interviews, and reference checks, the proposal of Business Solutions Group, Inc. (BSGI) is recommended for award of CATS+ TORFP #E00B6400091, IT Management Consulting Services. BSGI meets or exceeds all minimum qualifications detailed in the TORFP, for both the Offeror and the Offeror's Personnel. These include at least 5 years of experience within the last 10 years as a contractor providing IT management consulting and/or project management services for at least 3 IT projects, at least 1 of which must have been a multi-phased implementation with a cost in excess of \$10M, and at least 3 years experience as a contractor on 1 or more contracts providing technical architecture, strategy, and integration of multiple inter-related applications. References include the Deputy Secretary of DBM confirmed their experiences and the high quality of their work. BSGI's proposal presented a comprehensive approach to delivering the project management and oversight services, system integration services, and cultural change management services required by this TO, while their experience confirmed successful performance of similar work in the past, on other projects of similar scope and size to our project.

17. The Memorandum also explained how Netorian's technical proposal was evaluated and ranked, and how that impacted its overall ranking of its offer compared to BSGI's:

BSGI submitted the second best financial proposal. Despite being approximately \$3M less than BSGI's financial proposal, Netorian's financial proposal alone does not justify a change in its overall ranking. As stated in the TORFP, technical merit was given greater weight than the financial proposal. Netorian's technical proposal was 4th among 4 offerors although it met the minimum qualifications for the

following reasons: the proposal lacked quality, accuracy, and organization; the proposal scored lowest for preferred qualifications; proposed staff demonstrated significantly less experience in the preferred areas as compared to the other companies; some of the answers provided in interviews of proposed personnel contradicted some of the experiences presented in the proposal while some others refused to respond, despite repeated requests. Taking into account the written response, oral presentation and interviews, and references, Netorian's proposal failed to demonstrate that it could effectively perform all of the services and tasks included in the scope of work.

18. On March 2, 2017, the PO emailed Mr. Dow at Netorian and notified him that BSGI had been selected for award and offered a debriefing upon request. Mr. Dow requested a debriefing via an email sent to the PO the same day, which was held on March 7, 2017.

19. On March 14, 2017, Matthew Iannelli, Chief Executive Officer of Netorian, sent a letter to the PO protesting the selection of BSGI for award of the TO. The bases of Netorian's protest were:

1. COM improperly evaluated its technical proposal;
2. BSGI does not meet the Minimum Qualifications for Offerors as set forth in the TORPF;
3. BSGI is not properly certified as a Minority Business Enterprise "MBE")²;
4. COM made an improper best value decision under COMAR 21.05.03.03F when the PO determined that BSGI's offer was most advantageous to the State; and
5. BSGI is not a Master Contractor eligible for an award of a TO and is not a corporation in good standing under Maryland law.

20. On March 27, 2017, Netorian filed a Notice of Appeal with the Board. On April 14, 2017, COM filed a Motion to Dismiss Appeal for Lack of Jurisdiction. Netorian responded to COM's Motion to Dismiss on May 4, 2017. Since neither of the parties requested a hearing on the Motion

² Since Appellant withdrew its contentions regarding BSGI's MBE certification in its Response to the Agency Report, the Board need not address them.

to Dismiss, the Board ruled on the Motion based on the record before it and denied it. *See, Netorian Limited Liability Company*, MSBCA No. 3028 (August 1, 2017).

21. On September 6, 2017, COM filed the Agency Report. Netorian filed its Comments to the Agency Report on September 19, 2017. COM filed a Rebuttal to Netorian's Comments on September 26, 2017. None of the parties requested a hearing on the merits within the time for filing Comments on the Agency Report.

DECISION

To prevail on an appeal of the denial of a bid protest, an appellant must "show that the agency's action was biased or that the action was arbitrary, capricious, unreasonable, or in violation of law." *Hunt Reporting Co.*, MSBCA No. 2783 at 6 (2012) (citing *Delmarva Comty Servs. Inc.*, MSBCA 2302 at 8, 5 MSBCA 523 at 5 (2002)). Appellant did not contend that the selection of BSGI was a result of bias on the part of the PO or the COM evaluation team.

The bases of Appellant's protest can be divided into two categories. First, Appellant contends that the PO and COM evaluation team arbitrarily, capriciously and unreasonably (1) evaluated the Appellant's technical proposal, (2) erroneously determined that BSGI had met the Minimum Qualifications as an Offeror under the terms of the TORPF, and (3) determined an award to BSGI was most advantageous to the State. Second, Appellant contends that the PO violated the law by selecting BSGI for award because (1) BSGI is not a Master Contractor eligible to be awarded a TO, and (2) BSGI is not a corporation in good standing with the SDAT because it forfeited its legal right to do business in Maryland.³

³ "Not in good standing" means the business entity is not in compliance with one or more Maryland laws that apply to businesses and their responsibilities in this State. "Forfeited" means the right of the entity to conduct business in the State of Maryland has been relinquished. For domestic entities, this also means that the business has no existence under the laws of the State of Maryland. In most circumstances, a business is forfeited only after it has been "not in good standing," so the most common reasons for forfeiture are the same as the reasons businesses fall out of good standing. *See*, COMAR 18.04.03.01; §3-503 of the Corporations & Associations Article of the Annotated Code of Maryland; <http://dat.maryland.gov/businesses/Documents/entitystatus.pdf> (last visited Oct 9, 2017).

As to the first category of contentions on which Appellant bases its protest, *Hunt Reporting Co.*, contains a concise summary of the discretion a PO is allowed:

The Board has recognized and held that, “Procurement officials may award a contract to a higher priced, technically superior proposal if it is determined that the higher priced, technically superior proposal is also the proposal most advantageous to the State.” Delmarva Community Services, Inc., MSBCA 2302, 5 MSBCA ¶2302 (2002), *see also*, United Technologies Corp and Bell Helicopter, Textron, Inc., MSBCA 1403 and 1407, 3 MSBCA ¶201 (1989), Information Control Systems Corporation, MSBCA 1198, 1 MSBCA ¶81 (1984). Appellant has the burden of proving that the award of the contract herein is contrary to law or regulation or otherwise unreasonable, arbitrary, capricious or an abuse of discretion. Delmarva, *op cit.* “Mere disagreement with the judgment of the evaluators assigned to the evaluation panel for the procurement is insufficient to show that the evaluation of proposals is unreasonable.” AGS Genasys Corporation, MSBCA 1325, 2 MSBCA ¶158 (1987). Appellant may disagree with the evaluators’ recommendation but that alone does not meet the burden necessary....The Board has consistently held, that it will not supplant its judgment for that of the agency. *See*, Hensel Phelps Construction, MSBCA 1167, 1 MSBCA ¶68 (1984), Eisner Communications, Inc., MSBCA 2438, 2443 and 2445, 6 MSBCA ¶560 (2005), ACS State Healthcare, LLC, MSBCA 2474, 6 MSBCA ¶564 (2005). *Id.* at 6-7.

However, even though the PO and evaluators have discretion in evaluating proposals, the evaluation criteria and selection procedure set forth in the solicitation must be followed. Unexpressed criteria may not be considered in evaluating a proposal, nor may specific requirements or criteria in a RFP be ignored by the evaluating agency. *See*, *Walbert Partnership*, MSBCA No. 1633, 3 MSBCA ¶300 (1992). Additionally, when the RFP requires superior weight to be afforded to technical rather than pricing factors, the agency must follow the dictates of its RFP. *See*, *PSI Services, LLC*, MSBCA No. 2601 (2008).

The PO has sole discretion after receiving the advice of an evaluation panel, if one is used, to evaluate competing proposals in a negotiated procurement and make a determination recommending award to the responsible offeror whose proposal is determined to be the most advantageous to the State, considering price and the evaluation factors set forth in the RFP. *See*, *Clifton Gunderson, LLP*, MSBCA No. 2502 at 12 (2006), *ACS State Healthcare, LLC*, MSBCA No. 2474 at 14 (2005), COMAR 21.05.03.03(F).

The Appellant does not contend that the PO or COM evaluation team failed to follow the proposal evaluation procedures set forth in Section 5.2 of the TORPF, nor does it allege the PO failed to follow the selection procedures set forth in Section 5.3 of the TORFP. The Appellant also does not contend that the PO and the COM evaluation team failed to comply with the Minimum Qualification requirements set forth in Section 2.1.1 of the TORFP. Rather, Appellant disagrees with the determinations the PO and COM evaluation team made when they followed and complied with the relevant provisions of the TORFP.

As to the evaluation of Appellant's technical proposal, Appellant in its March 27, 2017, Notice of Appeal stated:

In an attachment hereto, Netorian provides all of the 37 errors, mistakes, and oversights made by the Agency in failing to credit Netorian for expertise plainly set forth in its proposal and the additional information requested by the Agency.
(emphasis in original).

The Board has reviewed these alleged "errors, mistakes, and oversights" made by the PO and the COM evaluation team and deems them to be disagreements by Netorian with the agency's evaluation of its technical proposal. As clearly established in *Eisner Communications, Inc.*, *supra* at 19, the Board is prohibited from re-evaluating and rescoring Appellant's technical proposal in accordance with the scorecard it furnished:

This Board does not constitute a "Procurement Super-Evaluation Committee" reviewing in minute detail every aspect of a procurement officer's decision to award a contract. The law in Maryland regarding competitive negotiations is clear. In a procurement by competitive sealed proposal, the process of weighing the technical merits is a subjective one that relies on the business and technical judgment of the Procurement Officer. Information Control Systems Corp., MSBCA 1198, 1 MSBCA ¶81 (1984). The evaluation of proposals in a competitive negotiation procurement is a matter left in the Procurement Officer's sole discretion after receiving the advice of an evaluation panel, if one is used. United Communities Against Poverty, Inc., MSBCA 1312, 2 MSBCA ¶144 (1987).

The Board finds that the PO and the COM evaluation team followed the proposal evaluation criteria set forth in the TORFP with due diligence. As such, we will not disturb the findings of the

Agency in evaluating and scoring Appellant's technical proposal. The Board finds that the Agency's determination regarding Appellant's technical proposal was not arbitrary, capricious or unreasonable.

Ms. Gorman's Memorandum recommending BSGI's selection for award is instructive in that it lists the deficiencies in Appellant's technical proposal vis-à-vis the evaluation criteria set forth in Section 5.2 of the TORPF. Section 5.2 lists, in descending order of importance, the technical criteria for evaluating proposals and provides that "[f]ailure to meet the minimum qualifications shall render a TO Proposal not reasonably susceptible for award." The first criterion listed in Paragraph A of Section 5.2 provided:

The Master Contractor's overall understanding of the TORFP Scope of Work — Section 3. Level of understanding will be determined by the quality and accuracy of the technical proposal in adherence with Section 4.4.

Ms. Gorman's Memorandum makes it clear that Netorian's technical proposal was ranked last because its proposal failed to demonstrate that it could effectively perform all of the services and tasks included in the scope of work. Further, the Memorandum also makes it clear that "the proposal lacked in quality, accuracy, and organization." Paragraph C of Section 5.2 lists as a criterion:

The capability of the proposed resources to perform the required tasks and produce the required deliverables in the TORFP Scope of Work Section 3. Capability will be determined from each proposed individual's resume, reference checks, and oral presentation (See Section 1.5 Oral Presentations/Interviews).

Ms. Gorman's Memorandum addresses this criterion by stating that "proposed staff demonstrated significantly less experience in the preferred areas as compared to the other companies; some of the answers provided in the interviews of proposed personnel contradicted some of the experience listed in the technical response; and some of the references could not confirm the experience presented in the proposal while some others refuse to respond, despite repeated requests."

The Board further finds that Appellant's next contention, that BSGI did not meet the Minimum Qualifications as set forth in Section 2.1.1 of the TORFP, as amended, is without merit. Section 2.1.1A, as amended, requires a Master Contractor who submits an offer pursuant to the TORFP to have "[a]t least five (5) years of experience within the last ten (10) years as a contractor providing IT management consulting and/or project management services for at least three (3) IT projects, at least one (1) of which must have been a multi-phased implementation with a cost in excess of \$10M." The agency's interpretation of Section 2.1.1A was clearly set forth in its answer to Question No. 10 posed before the amended closing date for proposals. Moreover, Ms. Gorman's Memorandum explained that "BSGI meets or exceeds all minimum qualifications detailed in the TORFP, for both the Offer and the Offeror's personnel. These include at least 5 years of experience within the last 10 years as a contractor providing IT management consulting and/or project management services for at least 3 IT projects, at least 1 of which must have been a multi-phased implementation with a cost in excess of \$10M...." The record indicates that COM contacted and received reference questionnaires from the three client organizations identified by BSGI pursuant to Section 4.4.1G of the TORFP and confirmed that BSGI met the requirements of Section 2.1.1A of the TORFP. The Board finds that the PO's and the COM evaluation team's determination that BSGI met the minimum requirements of the TORFP was not arbitrary, capricious or unreasonable.

We now turn to Appellant's contention that COM made an improper best value decision under COMAR 21.05.03.03F when the PO determined that BSGI's offer was most advantageous to the State. COMAR 21.05.03.03F provides, in pertinent part:

Award. Upon completion of all discussions and negotiations, the procurement officer shall make a determination recommending award of the contract to the

responsible offeror whose proposal is determined to be the most advantageous to the State, considering price and the evaluation factors set forth in the request for proposals.

Section 5.3F of the TORFP provides:

The most advantageous TO Proposal considering both the technical and financial submissions shall be selected for TO award. In making this selection, technical merit has greater weight.

Ms. Gorman's Memorandum stated that "BSGI submitted the second best financial proposal. Despite being approximately \$3M less than BSGI's financial proposal, Nettori's financial proposal alone does not justify changing its overall ranking. As stated in the TORFP, technical merit was given greater weight than the financial proposal." The evidence in the record confirms that the agency followed both the provisions of COMAR 21.05.03.03F and Section 5.3F of the TORFP in selecting BSGI's offer as the most advantageous to the State. Accordingly, the Board finds the PO's determination that BSGI's offer to be the most advantageous to the State is not arbitrary, capricious or unreasonable.

Finally, with respect to Appellant's contention that BSGI is not a Master Contractor eligible for an award of a TO because it is not a corporation in good standing under Maryland law, we conclude that this contention is not supported by the public records, of which we take judicial notice. If Appellant's contention were true, then the selection of BSGI for award would be unlawful. However, both the record in this appeal and public records reflect that BSGI is a corporation in good standing with the SDAT, now and at all times during the TORFP solicitation. It appears that Appellant has confused the Master Contractor selected for award by COM with another defunct business entity by the same name that forfeited its charter before BSGI filed its Articles of Incorporation and before the CATS+ procurement process was initiated. The evidence does not show that DoIT intended to award a Master Contract to this other defunct entity. Accordingly, the Board finds the award of the TO to BSGI was not unlawful.

ORDER

For the foregoing reasons, the above-captioned appeal is hereby DENIED.

SO ORDERED this 25th day of October, 2017.

/s/
Michael J. Stewart Jr., Esq., Member

I Concur:

/s/
Bethamy N. Beam, Esq., Chairman

/s/
Ann Marie Doory, Esq., Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3028, Appeal of Netorian Limited Liability Company, under Comptroller of Maryland Task Order RFP No. E00B6400091.

Dated: 10/25/17

/s/
Ruth W. Foy
Deputy Clerk